

RESOLUTION NO. 05- 293

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT OF EPA'S REMEDIAL INVESTIGATION/FEASIBILITY STUDY, THE "GOVERNMENT TO GOVERNMENT" LETTER AGREEMENT, AND TO AMEND THE FY 04/05 BUDGET.

The City Council of the City of Las Cruces is informed that:

WHEREAS, City Council Resolution No. 05-198 authorized the Acting City Manager to submit to EPA the final form of a good faith settlement offer for funding EPA's Remedial Investigation/Feasibility Study ("RI/FS") for the Griggs and Walnut Groundwater Plume Superfund Site ("Site"). The Resolution further authorized staff to negotiate an agreement for funding jointly with Dona Ana County and EPA consistent with the Resolution, and to bring the finalized agreement for funding back to the City Council for approval; and

WHEREAS, City and County staffs have been working with EPA to finalize both the Settlement Agreement and the Government to Government Letter Agreement. Offers and counteroffers have gone back and forth, and staff is satisfied that EPA has accepted the substance of the City's proposed modifications; and

WHEREAS, the Settlement Agreement generally provides that the City and the County will fund, in advance, EPA's performance and preparation of a RI/FS for the Site. The funding amounts are specifically designated as \$200,000 due within thirty (30) days after final approval of the Agreement by EPA, the City and the County; then \$300,000 due within 120 days after final approval; and then \$300,000 due within 240 days after final approval. This funding totals \$800,000. Pursuant to the Joint Superfund Project Memorandum of Understanding dated December 1, 2004, the City pays EPA and is reimbursed by the County within thirty (30) days upon presentation of a request for payment from the City; and

WHEREAS, the Government to Government Letter Agreement is a letter from EPA, which the City and the County would accept, that will be attached to the Settlement Agreement. City and County staffs wanted the letter commitment from EPA because it insures that the City and the County will have full participation in the development of the RI/FS by EPA, including defining the boundaries of the Site. Participation by the City and the County should reduce the costs of the RI/FS, should insure that any remediation remedy that is eventually selected after public participation is acceptable to the City and the County, and should make the process more streamlined and less bureaucratic; and

WHEREAS, the County Commission will be approving the Settlement Agreement and the Government to Government letter agreement at it's meeting on April 12, 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT the Settlement Agreement of EPA's Remedial Investigation/Feasibility Study and the Government to Government Letter Agreement are hereby approved; and

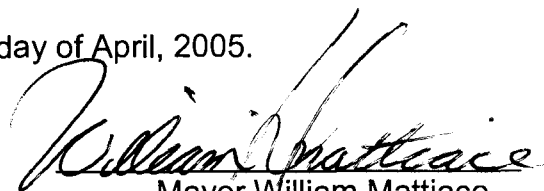
(II)

THAT the City of Las Cruces Fiscal Year 2004/05 budget is hereby amended as reflected in Exhibit "A", and

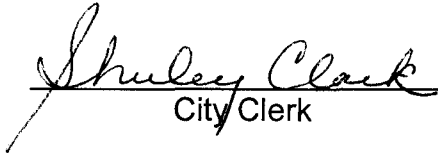
(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this 4th day of April, 2005.


Mayor William Mattiace

ATTEST:


City Clerk

{SEAL}

Moved by: Frietze

Seconded by: Archuleta

Mayor Mattiace:	<u>aye</u>
Councillor Frietze:	<u>aye</u>
Councillor Connor:	<u>aye</u>
Councillor Archuleta:	<u>aye</u>
Councillor Trowbridge:	<u>aye</u>
Councillor Strain:	<u>aye</u>
Councillor Miyagishima:	<u>aye</u>

APPROVED AS TO FORM:


Deputy City Attorney

RESOLUTION NO. 05- 198

A RESOLUTION AUTHORIZING THE ACTING CITY MANAGER TO SUBMIT TO ENVIRONMENTAL PROTECTION AGENCY ("EPA") THE FINAL FORM OF A GOOD FAITH SETTLEMENT OFFER FOR FUNDING OF EPA'S REMEDIAL INVESTIGATION/FEASIBILITY STUDY FOR THE GRIGGS AND WALNUT GROUNDWATER PLUME SUPERFUND SITE, AND FURTHER AUTHORIZING STAFF TO NEGOTIATE AN AGREEMENT FOR FUNDING JOINTLY WITH THE COUNTY AND EPA CONSISTENT WITH THIS RESOLUTION AND SUBJECT TO FINAL APPROVAL BY THE CITY COUNCIL.

The City Council is informed that:

WHEREAS, the City received a Special Notice from EPA in October, 2004 setting forth two possible approaches to solve the groundwater contamination within the Griggs and Walnut Groundwater Plume Superfund Site; and

WHEREAS, one approach provides that the City and the County would enter into an administrative order on consent whereby the parties would complete the Remedial Investigation/Feasibility Study ("RI/FS"); and

WHEREAS, the second approach provides that the City and the County would enter into an agreement for funding with EPA whereby the parties would pay EPA to complete the RI/FS; and

WHEREAS, City and County staff and their joint consultants have been working together under the Joint Superfund Project Memorandum of Understanding ("MOU") dated December 1, 2004, and staff has met with EPA representatives in Dallas, Texas; and

WHEREAS, the parties' staff and their consultants recommend that the City and County submit a good faith settlement offer to EPA to fund EPA's completion of the RI/FS. The final form of the good faith offer would be similar to the version attached as Exhibit "A" to this Resolution; and

WHEREAS, the good faith offer must be submitted to EPA on or before December 27, 2004; and

WHEREAS, EPA estimates that it will cost the parties approximately \$800,000.00 for EPA to complete the RI/FS, plus an estimated additional \$200,000.00 for EPA oversight and project management costs. Pursuant to the MOU, these costs would be shared equally between the parties; and

WHEREAS, the parties will continue to equally share the costs of consultants pursuant to the MOU, although the parties' outside attorney fees will be individually paid for by each party; and

WHEREAS, staff was unable to coordinate a joint meeting of the respective governing bodies but the County Commission intends to authorize its County Manager or designee to negotiate the final version of the good faith offer to EPA at a December 14, 2004 meeting, and will have made its decision prior to the City Council meeting on December 20, 2004; and

WHEREAS, once EPA receives the parties' good faith settlement offer for funding, there will be an additional thirty (30) days for the parties to jointly negotiate an Agreement for Funding with EPA.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT the Acting City Manager is authorized to execute a good faith settlement offer for funding to EPA jointly with the County, which offer will be similar to the version attached as Exhibit "A" to this Resolution.

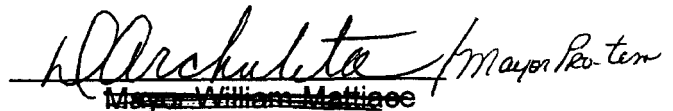
(II)

THAT staff is authorized to jointly negotiate an Agreement for Funding with the County and EPA consistent with this Resolution, which Agreement will be subject to final approval by the City Council.

(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this 20th day of December, 2004.


~~Mayor William Matigoe~~ Mayor Pro Tem

ATTEST:

Shirley Clark
City Clerk

{SEAL}

Moved by: Trowbridge

Seconded by: Connor

Mayor Mattiace:	<u>aye</u>
Councillor Fietze:	<u>aye</u>
Councillor Connor:	<u>aye</u>
Councillor Archuleta:	<u>aye</u>
Councillor Trowbridge:	<u>aye</u>
Councillor Strain:	<u>aye</u>
Councillor Miyagishima:	<u>aye</u>

APPROVED AS TO FORM:

Myraa Ouy
ASS'T City Attorney

December XX, 2004

Petra Sanchez
Remedial Project Manager (6SF-LT)
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

**Re: Good Faith Settlement Offer for Funding
Remedial Investigation/Feasibility Study (RI/FS)
Griggs and Walnut Ground Water Plume
Las Cruces, New Mexico**

Dear Ms Sanchez:

The City of Las Cruces and Doña Ana County (Settling Parties) propose to accept the Agreement for Funding, and make this Good Faith Settlement Offer Funding (Offer) to the Environmental Protection Agency, Region XI (EPA), for the above-referenced Superfund site. This Offer is based on the documents provided by EPA to the Settling Parties, discussions with our consultants, and the very positive and informative meeting with you in Dallas on November 17, 2004. We understand that EPA encourages full collaboration with the Settling Parties to complete the RI/FS process. Because of that understanding, we have decided to accept the Agreement for Funding approach, rather than to complete the work ourselves. We believe that a partnership can be established with EPA whereby the Settling Parties will have meaningful involvement in the completion the Remedial Investigation and Feasibility Study.

A. Objectives of the RI and FS

In preparing this Offer, the Settling Parties have identified their primary objectives in entering into an *Agreement for Funding of EPA's Remedial Investigation/Feasibility Study*:

1. The continued protection of human health and the environment through the application of a remedy that effectively mitigates future exposure to contaminated groundwater or soil vapors.
2. The efficient and appropriate utilization of tax dollars through the implementation of a remedy that is both cost-effective and appropriate given the low levels of chlorinated

EXHIBIT

solvents in ground water beneath the site and utilizes, to the extent possible, the existing infrastructure.

The Settling Parties have enacted a Memorandum of Understanding that will enable us to accomplish the next phase of the above objectives.

A redline/strikeout version of the *Agreement for Funding of EPA's Remedial Investigation/ Feasibility Study (EPA Draft 8/24/04)* is attached. We have summarized additional items and objectives that the Settling Parties propose to accomplish in a collaborative effort to complete the RI and FS through this agreement.

B. Remedial Investigation

The items listed below for the RI and FS have been structured to show their relationship to our primary objectives. We understand from the November 17 meeting that these are also EPA's main objectives.

1. Collect limited additional data to refine the current plume boundary. To this end, we think the following wells, as discussed in our November 17 meeting, are warranted:
 - a) A well to refine the eastern boundary: east of and between municipal wells nos. 19 and 21
 - b) A well to refine the south-southeast boundary: located between the Dona Ana County maintenance yard and the Arroyo Plaza (on Lohman Avenue)
2. Assess potential impacts to municipal supply wells in area of plume: The City of Las Cruces will conduct appropriate additional monitoring of municipal wells beyond the compliance monitoring done by the New Mexico Environment Department. The City will provide EPA and their consultant with these data.
3. Assess potential impacts to private wells in area of plume: The Settling Parties can assist EPA's consultant in developing a list of private wells utilized for water supply within the defined plume boundaries.
4. Assess fate and transport of PCE in vadose and saturation zones: There are two aspects to this item. The first is assessing if the PCE that remains in the subsurface soils is present at a concentration that can contribute to future groundwater contamination. The second aspect is the effect of PCE to human health receptors. The Settling Parties agree that more information is required regarding potential exposures related to contaminants in the vapor phase, but do not believe that additional permanent soil gas wells are necessary or appropriate. Rather, the Settling Parties believe that better data on PCE vapor in indoor spaces can be collected from indoor air-spaces by passivated stainless steel soil gas

Summa® Canisters (24 hours), and analyzing the samples using the TO-15 analytical method. Outdoor air quality as impacted by evolution from the ground surface can be directly measured using a flux chamber and Summa® Canister, and once again analyzing the samples by the TO-15 method.

5. Additionally, the Settling Parties request the following allowances in order to fund future work by EPA:
 - a) The right to review and comment on the work plans for the proposed field program to ensure that the data collected are appropriate and supportable
 - b) Input with regard to the placement of additional monitoring wells, their type, location, and depth or screen intervals
 - c) With their consultants, take the lead on groundwater modeling for the RI and FS
 - d) A mediation process for Dispute Resolution if the parties are unable to reach an agreement within the Negotiation Period specified in paragraphs 24 and 25 of the draft Agreement for Funding

C. Feasibility Study

Again, our primary objective is the continued protection of human health and the environment, while maintaining the most cost-effective utilization of tax dollars. The main route of human exposure to PCE from the Walnut-Griggs Ground Water Plume is through the drinking water supply. The selected remedy, therefore, must prevent contamination of additional City wells and eventually restore the aquifer to protect our future supply of safe drinking water.

The Settling Parties recognize that feasibility studies must follow the nine criteria of the National Contingency Plan. We, however, believe any feasibility study performed on the Griggs Walnut Plume must take into account the presence of the existing infrastructure associated with the impacted municipal water supply wells. Accordingly, a "focused" FS is preferred. We request that the EPA formally acknowledge this in the final Agreement for Funding.

D. Groundwater Modeling

Groundwater modeling is needed to assess the current zone of capture resulting from the cones of depression of the four existing, impacted municipal water supply wells. This modeling is also needed to assess pumping rates from these and other wells to determine what configuration and/or operation may give the most effective removal of PCE contamination from within the plume boundary. Modeling for the RI and FS must be site-specific and consistent with the hydrogeological model already being developed and parameterized for the Mesilla Valley basin. The Settling Parties propose to develop the site model, and coordinate with the EPA and its contractors to incorporate the model and simulation results into the final work product. Further, we would continue to develop and test the model as additional information becomes available during the completion of the RI/FS and continued monitoring.

E. Community Relations

It is essential to keep the public informed of the project as it proceeds. The Settling Parties are knowledgeable and sensitive to the needs of our community. It is critical that all information is disseminated in one clear voice. Accordingly, the Settling Parties propose to have EPA formally acknowledge that community relations and communications will be managed by the Settling Parties with the collaboration of EPA.

F. Amendment of the Agreement for Funding

Based on our understanding of EPA's desire to move forward promptly in a streamlined RI and FS process, we request that the EPA incorporate these elements into the final Agreement for Funding. We believe these changes are essential to arrive at an appropriate and cost-effective remedy that will be acceptable to our community in the most direct and expedient manner.

G. Willingness to Reimburse EPA for Completion of the RI/FS

The Settling Parties are willing to fund completion of the RI and FS in accordance with the amount set forth in the cover letter to the Special Notice Letter, dated October 7, 2004.

H. Capability to Finance the RI/FS

Annual financial reports for the City of Las Cruces and Dona Ana County were utilized by Industrial Economics Inc. to conduct the Ability to Pay Assessments reported to EPA in memoranda dated January 30, 2004 and January 31, 2002 (presumably 2004), respectively. The City and County will provide the most recent version of their annual financial reports at the request of EPA.

I. Lead Negotiation Contact

Dr. Jorge Garcia, PE, Director of Utilities, City of Las Cruces, POB 20000, Las Cruces, NM 88004, Phone 505-528-3511.

Respectfully submitted,

City of Las Cruces

Doña Ana County

**DOÑA ANA COUNTY
BOARD OF COUNTY COMMISSIONERS**

180 West Amador Avenue
Las Cruces, New Mexico 88005
Telephone: (505) 647-7200
Toll-Free: 877- 627-7200

Risk Management
Initiating Department

December 14, 2004
Meeting Date

Ed Fridenstine
Contact Person

Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

APPROVAL FOR THE COUNTY MANAGER OR DESIGNEE TO PROCEED UNDER A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF LAS CRUCES TO SUBMIT AN OFFER AGREEING TO FUND THE ENVIRONMENTAL PROTECTION AGENCY'S COMPLETION OF THE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY (RI/FS) AT THE GRIGGS AND WALNUT SUPERFUND SITE AND DELEGATING THE AUTHORITY TO NEGOTIATE TERMS OF AN AGREEMENT TO COMPLETE THE RI/FS SUBJECT TO FINAL APPROVAL BY THE BOARD OF COUNTY COMMISSIONER'S.

SUMMARY OF ITEM TO BE CONSIDERED

The Environmental Protection Agency (EPA) has set a date of December 27, 2004, for the County and City to respond with a "Good Faith Offer" in response to the County and City being named as responsible parties at the Griggs and Walnut Superfund Site. After evaluation of the alternatives, the members of the Joint Superfund Project Team and their consultants believe that the best option is to provide funding to the EPA to conclude the Remedial Investigation and Feasibility Study with material and collaborative participation from the County and City. The EPA has expressed a desire for active participation from the County and City. Under any of the alternatives, the EPA retains final decision-making authority.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

(1). Draft of Good Faith Offer to EPA

SUMMARY OF FINANCIAL IMPACT

All options require the County and City to pay the costs of completing the Remedial Investigation and Feasibility Study (RI/FS), which includes the EPA oversight cost as well as fees incurred by the County and City consultants. It is believed that the approach recommended above has the best chance to minimize total costs while achieving the desired results. Total costs are not known with certainty but are expected to approach \$1,000,000 over the remainder of the RI/FS. All costs will be split evenly between the County and the City. Future budgetary revisions will be required to the Risk Management budget.

ADMINISTRATIVE REVIEW AND APPROVAL

<u> </u> Finance	<u> </u> Legal	<u> </u> County Manager
<u> </u> Purchasing	<u> </u> Human Resources	<u> </u> Assistant County Manager
<u> </u> Planning	<u> </u> HHS	<u> </u> Senior Director

DOCUMENT CONTROL

Original/s for signature? Yes No For Recording? Yes No

Return original/s to: Name Dept.

Send copy of recorded original/s (resolution and ordinances only) to: Name Dept.

Deadline for return of document/s? Yes, return by: or No



City of Las Cruces

COUNCIL ACTION FORM

For Meeting of December 20, 2004
(Adopted Date)

TITLE:

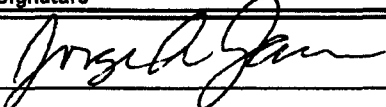
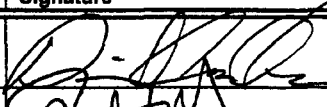

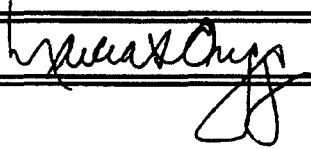

A RESOLUTION AUTHORIZING THE ACTING CITY MANAGER TO SUBMIT TO ENVIRONMENTAL PROTECTION AGENCY ("EPA") THE FINAL FORM OF A GOOD FAITH SETTLEMENT OFFER FOR FUNDING OF EPA'S REMEDIAL INVESTIGATION/FEASIBILITY STUDY FOR THE GRIGGS AND WALNUT GROUNDWATER PLUME SUPERFUND SITE, AND FURTHER AUTHORIZING STAFF TO NEGOTIATE AN AGREEMENT FOR FUNDING JOINTLY WITH THE COUNTY AND EPA CONSISTENT WITH THIS RESOLUTION AND SUBJECT TO FINAL APPROVAL BY THE CITY COUNCIL.

BACKGROUND:

The City received a Special Notice from EPA in October, 2004 setting forth two possible approaches to solve the groundwater contamination within the Griggs and Walnut Groundwater Plume Superfund Site. One approach provides that the City and the County would enter into an administrative order on consent whereby the parties would complete the Remedial Investigation/Feasibility Study ("RI/FS"). The second approach provides that the City and the County would enter into an agreement for funding with EPA whereby the parties would pay EPA to complete the RI/FS.

City and County staff and their joint consultants have been working together under the Joint Superfund Project Memorandum of Understanding ("MOU") dated December 1, 2004, and staff has met with EPA representatives in Dallas, Texas. The parties' staff and their consultants recommend that the City and County submit a good faith settlement offer to EPA to fund EPA's completion of the RI/FS. The final form of the good faith offer would

(Continue on additional sheets as required)

Name Of Drafter Marcia B. Driggers		Department:: Legal on behalf of Utilities		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		3511	Budget		541-2300
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

be similar to the version attached as Exhibit "A" to this Resolution. The good faith offer must be submitted to EPA on or before December 27, 2004.

EPA estimates that it will cost the parties approximately \$800,000.00 for EPA to complete the RI/FS, plus an estimated additional \$200,000.00 for EPA oversight and project management costs. Pursuant to the MOU, these costs would be shared equally between the parties. The parties will continue to equally share the costs of consultants pursuant to the MOU, although the parties' outside attorney fees will be individually paid for by each party.

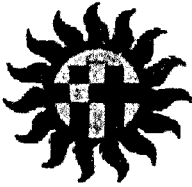
Staff was unable to coordinate a joint meeting of the respective governing bodies but the County Commission intends to authorize its County Manager or designee to negotiate the final version of the good faith offer to EPA at a December 14, 2004 meeting, and will have made its decision prior to the City Council meeting on December 20, 2004. Once EPA receives the parties' good faith settlement offer for funding, there will be an additional thirty (30) days for the parties to jointly negotiate an Agreement for Funding with EPA.

SUPPORT INFORMATION:

1. Resolution with Exhibit "A" attached;
2. County's Agenda Sheet for the December 14, 2004 meeting.

COUNCIL OPTIONS:

1. Approve the Resolution as drafted.
2. Modify the Resolution as the Council deems appropriate.
3. Not approve the Resolution and provide direction to staff.



Joint Superfund Project

City of Las Cruces and Doña Ana County



December 21, 2004

COPY

Petra Sanchez
Remedial Project Manager (6SF-LT)
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

**Re: Good Faith Settlement Offer for Funding
Remedial Investigation/Feasibility Study (RI/FS)
Griggs-Walnut Ground Water Plume
Las Cruces, New Mexico**

Dear Ms Sanchez:

The City of Las Cruces and Doña Ana County (Settling Parties) are willing to finance completion of the RI/FS by Environmental Protection Agency, Region 6 (EPA) with the assumption that we reach agreement with EPA on the terms of the Agreement for Funding (Agreement). Toward that end, this letter and the attached redline of your draft Agreement (dated 6/30/04), provide our Good Faith Settlement Offer Funding (Offer) for the above-referenced Superfund site (Site). This Offer is based on the correspondence and documents provided by EPA to the Settling Parties, discussions with our consultants, and the very positive and informative meeting with you in Dallas on November 17, 2004. We understand that EPA encourages full collaboration with the Settling Parties to complete the RI/FS process. Because of that understanding, we have decided to base this Offer on the Agreement for Funding approach, rather than to complete the RI/FS work ourselves. We believe that a partnership can be established with EPA whereby the Settling Parties will have meaningful involvement in completing the RI and FS, and selecting the recommended remedy.

A. Objectives of the RI and FS

In preparing this Offer, the Settling Parties have identified their primary objectives in entering into this Agreement:

Program Director:
Jorge A. Garcia, Ph.D., P.E.,
Utilities Director
Utilities Department
PO 20000, Las Cruces, NM 88004
(505) 528-3511 - Fax: (505) 528-3619
jogarcia@las-cruces.org

Program Manager:
Dan Santantonio, Ph.D.
Regulatory Analyst
Utilities Department
PO Box 20000, Las Cruces, NM 88004
(505) 528-3528 - Fax: (505) 528-3619
dsantantonio@las-cruces.org

1. The continued protection of human health and the environment through the application of a remedy that effectively mitigates future exposure to contaminated groundwater or soil vapors.
2. The efficient and appropriate utilization of tax dollars through the implementation of a remedy that is both cost-effective and appropriate given the low levels of chlorinated solvents in ground water beneath the site and that utilizes, to the extent possible, the existing infrastructure.

The Settling Parties have entered into a Memorandum of Understanding that will enable us to accomplish the next phase of the above objectives (attached).

A redline/strikeout version of the *Agreement for Funding of EPA's Remedial Investigation/Feasibility Study* (EPA draft 6/30/04, as provided in your letter dated October 7, 2004) is attached. We have summarized additional items and objectives that the Settling Parties propose to accomplish in a collaborative effort with EPA to complete the RI and FS through this Agreement.

B. Remedial Investigation

The items listed below for the RI and FS have been structured to show their relationship to our primary objectives. We understand from the November 17 meeting that these are also EPA's main objectives:

1. *Collect limited additional data to refine the current plume boundary.* To this end, we think the following wells, as discussed in our November 17 meeting, are warranted:
 - a) A well to refine the eastern boundary: east of and between municipal wells nos. 19 and 21
 - b) A well to refine the south-southeast boundary: located between the Dona Ana County maintenance yard and the Arroyo Plaza (on Lohman Avenue)
2. *Assess potential impacts to municipal supply wells in area of plume.* The City of Las Cruces will conduct additional periodic monitoring of municipal wells beyond the compliance monitoring done by the New Mexico Environment Department. The City will provide EPA and its consultant with these data.

3. *Assess potential impacts to private wells in area of plume.* The Settling Parties can assist EPA's consultant in developing a list of private wells utilized for water supply within the defined plume boundaries.
4. *Assess fate and transport of PCE (tetrachloroethylene, also known as perchloroethylene) in the vadose and saturation zones.* There are two aspects to this item. The first is assessing whether PCE that remains in the subsurface soils is present at a concentration that can contribute to future groundwater contamination. The second aspect is health effect of PCE to human receptors. The Settling Parties agree that more information is needed regarding potential human exposure related to PCE in the vapor phase, but we do not believe that additional permanent soil gas wells are necessary, or more appropriate, for this purpose. Rather, the Settling Parties believe that better data on exposure to PCE vapor in indoor spaces can be collected from indoor air-spaces by passivated stainless steel soil gas Summa® Canisters (24 hours), and analyzing the samples using the TO-15 analytical method. Exposure to PCE in outdoor air by evolution from the ground surface can be directly measured using a flux chamber and Summa® Canister, and once again, analyzing the samples by the TO-15 method.
5. Additionally, the Settling Parties request the following allowances in order to fund future work by EPA:
 - a) The right to review and comment on the work plans for the proposed field program to ensure that the data collected are appropriate and supportable
 - b) Input with regard to the placement of additional monitoring wells, their type, location, and depth or screen intervals
 - c) With their consultants, take the lead on groundwater modeling for the RI and FS
 - d) A mediation process for Dispute Resolution, or an Alternative Dispute Resolution process, if the parties are unable to reach an agreement within the Negotiation Period, as specified in Paragraphs 24 and 25 of the draft Agreement.

C. Feasibility Study

Again, our primary objective is the continued protection of human health and the environment, while maintaining the most cost-effective utilization of tax dollars. The main hypothetical route of human exposure to PCE from the Griggs-Walnut Ground Water Plume is through the drinking water supply. The selected remedy, therefore, must prevent contamination of additional wells and eventually restore the aquifer to protect our future supply of safe drinking water.

The Settling Parties recognize that feasibility studies must follow the nine criteria of the National Contingency Plan. We, however, believe any feasibility study performed on the Griggs-Walnut

Ground Water Plume must fully consider utilization of the existing infrastructure associated with the impacted municipal water supply wells. Accordingly, a “focused” FS is preferred. We request that the EPA formally acknowledge this in the final Agreement for Funding.

D. Groundwater Modeling

Groundwater modeling is needed to assess the current zone of capture resulting from the cones of depression of the four existing, impacted municipal water supply wells. This modeling is also needed to assess pumping rates from these and other wells to determine what configuration and operations may give the most effective removal of the PCE contaminant from within the plume boundary. Modeling for the RI and FS must be Site-specific and consistent with the hydro-geological model already being developed and parameterized for the Mesilla Valley basin by John Shomaker and Associates. The Settling Parties propose to develop the Site model, and coordinate with the EPA and its contractors to incorporate the model and simulation results into the final RI and FS. Further, we would continue to develop and test the model as additional information becomes available during the completion of the RI/FS and continued monitoring.

E. Public Information

It is essential to keep the public informed of the project as it proceeds. The Settling Parties are knowledgeable and sensitive to the needs of our community. It is critical that all information is disseminated in one clear voice. Accordingly, the Settling Parties propose to have EPA formally acknowledge that public information will be managed by the Settling Parties with the collaboration of EPA.

F. Amendment of the Agreement for Funding

Based on our understanding of EPA’s desire to move forward promptly in a streamlined RI and FS process, we request that the EPA incorporate these elements into the final Agreement for Funding. We believe these changes are essential to arrive at an appropriate and cost-effective remedy that will be acceptable to our community in the most direct and expedient manner.

G. Willingness to Reimburse EPA for Completion of the RI/FS

Based in part upon the cost estimate of \$800,000 in your Special Notice Letter of October 7, 2004, the Settling Parties are willing to fund completion of the RI and FS by EPA with the assumption that we will be able to agree with EPA on the terms of this Agreement.

H. Capability to Finance the RI/FS

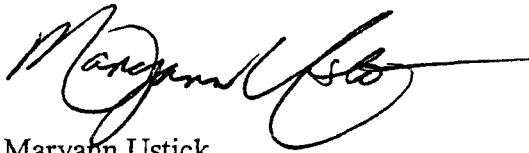
Annual financial reports for the City of Las Cruces and Dona Ana County were utilized by Industrial Economics Inc. to conduct the Ability to Pay Assessments reported to EPA in memoranda dated January 30, 2004 and January 31, 2002 (presumably 2004), respectively. We, therefore, believe that EPA already has the financial information needed to determine whether the Settling Parties can finance the RI/FS. The City and County, of course, will provide the most recent version of their annual financial reports at the request of EPA.

I. Lead Negotiation Contact

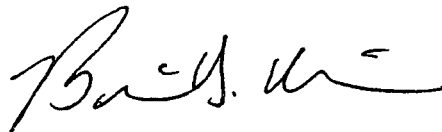
Dr. Jorge Garcia, PE, Director of Utilities, City of Las Cruces, POB 20000, Las Cruces, NM 88004, Phone 505-528-3511.

Thank you for the opportunity to present this Offer. We look forward to working with you to negotiate an Agreement for Funding which protects human health and the environment in a cost-effective manner that is appropriate to the contaminant levels at issue.

Respectfully submitted,



Maryann Ustick
Acting City Manager
City of Las Cruces



Brian D. Haines
County Manager
Doña Ana County

c: John Caldwell, County Attorney
Marcy Driggers, Assistant City Attorney

COPY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:
Griggs and Walnut Ground Water Plume
Las Cruces, New Mexico

SETTLEMENT AGREEMENT FOR
FUNDING OF EPA'S REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

Doña Ana County, New Mexico, and
City of Las Cruces, New Mexico

U.S. EPA Region 6
CERCLA Docket No.06-06-04

Settling Parties

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622. This settlement agreement is pursuant
to CERCLA section 122(d)(3), 42 U.S.C. §
9622(d)(3).

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Appendix (Map of Griggs and Walnut Ground Water Plume Site) Attached

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ENVIRONMENTAL PROTECTION AGENCY
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as amended, 42 U.S.C. §§ 9604, 9607 and
9622. This settlement agreement is pursuant
to CERCLA section 122(d)(3), 42 U.S.C. §
9622(d)(3).

I. JURISDICTION

1. This Settlement Agreement is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), and Doña Ana County, New Mexico and the City of Las Cruces, New Mexico ("Settling Parties"). Under this Settlement Agreement, Settling Parties shall provide funds to EPA in advance for EPA's performance and preparation of a remedial investigation and feasibility study ("RI/FS") at the Griggs and Walnut Ground Water Plume Superfund Site (the "Site") located in the City of Las Cruces, Doña Ana County, New Mexico. Each Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms. This settlement agreement is pursuant to CERCLA section 122(d)(3), 42 U.S.C. § 9622(d)(3).

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 6 to the Superfund Division Director by delegations Nos. R6-14-14-C (June 8, 2001) and R6-14-14-D (June 8,

2001).

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), by providing DOI with a copy of EPA's Special Notice Letter dated October 7, 2004, EPA, notified the U.S. Department of Interior ("DOI") of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

II. BACKGROUND

4. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5. In response to the release or threatened release of hazardous substances at or from the Site, EPA will undertake the RI/FS pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604 and the National Contingency Plan (NCP), 40 CFR Part 300.

6. In performing this response action (*i.e.*, the RI/FS), EPA will incur Future Response Costs at or in connection with the Site. Settling Parties shall provide funds to EPA in advance, and EPA will use these funds for the payment of these Future Response Costs as provided herein.

7. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for Future Response Costs incurred or to be incurred at or in connection with the Site.

8. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Settlement Agreement applies to and is binding upon EPA and upon Settling Parties and their successors and assigns, including without limitation any successor agencies, departments, or other entities. Any change in administration, any political reorganization, or any change in the status of a Settling Party including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement

that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendix attached hereto, whether the terms are capitalized or not, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement and the attached appendix. In the event of conflict between this Settlement Agreement and the appendix, the Settlement Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" means the date that this Settlement Agreement is received by the Settling Parties, as documented by a certified mail receipt or courier delivery record, after being signed by the EPA Region 6 Superfund Division Director.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. For the purposes of this Settlement Agreement, the words "include," "includes," or "including" shall not be construed as words of limitation; that is, they shall be construed such that the phrases "without limitation" or "but not limited to" are implied, unless such phrases are already in place. For example, "including x, y, and z" would be construed as "including without limitation x, y, and z" or as "including, but not limited to, x, y and z," but the phrase "including, but not limited to, x, y and z" would be construed as it reads.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in performance and preparation of a remedial investigation and feasibility study ("RI/FS") at the Griggs and Walnut Ground Water Plume Superfund Site (the "Site") after the Effective Date. Future Response Costs include without limitation the United States' payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, overhead costs, attorneys' fees, and costs paid to secure access including the amount of any just compensation. Future Response Costs do not include costs that the United States incurs after the Effective Date that are not related to the RI/FS. Costs that are not related to the RI/FS include costs that the United States incurs for actions, including enforcement actions, that it takes related to Remedial Design and Remedial Action at the Site. Future Response Costs include without limitation EPA's costs associated with the activities described in Section XIII (Involvement of the Settling Parties).

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹

i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral. Paragraphs include subparagraphs identified by lower case letters.

j. "Parties" shall mean EPA and Settling Parties.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through the Effective Date.

l. "PCE" means tetrachloroethylene, also called perchloroethylene.

m. "Remedial Project Manager" or "RPM" shall mean EPA's Remedial Project Manager for the Site. EPA has designated Ms. Petra Sanchez as its RPM. The RPM shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP. In addition, the RPM shall have the authority consistent with the NCP, to halt any work at the Site, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. If the EPA changes RPMs, it will notify the Settling Parties.

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "Settling Parties" shall mean Doña Ana County, New Mexico, and the City of Las Cruces, New Mexico. If EPA and the Settling Parties agree in writing, this Definition and the rest of the Settlement Agreement may be amended to include additional Settling Parties.

p. "Site" shall mean the Griggs and Walnut Ground Water Plume Superfund Site, an asymmetrical area that contains an aquifer with a PCE contaminated ground water plume that underlies the area around the intersection of Griggs Avenue and Walnut Street in the City of Las Cruces, Doña Ana County, New Mexico. The Site is estimated to extend east to near Interstate 25, northwest to about Fir Avenue (west of Solano Drive), north to about East Hadley Avenue, and south to about East Griggs Avenue. On the surface, the Site measures at least 9,750 feet by

¹ The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.

2,250 feet. The Site also includes all suitable areas in very close proximity to the contamination that are necessary for the implementation of the response action to address the contamination. The estimated site boundaries are generally shown on the map that is Appendix A to this Settlement Agreement.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. SPECIAL ACCOUNT FOR FUTURE RESPONSE COSTS

11. In accordance with Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), Settling Parties agree to provide funds to EPA according to the procedures and time frames described in this Section, for the payment of Future Response Costs. EPA will establish a reimbursable special account (the "Griggs and Walnut Ground Water Plume Superfund Site Special Account") to retain funds, which EPA will use for the payment of Future Response Costs paid by the EPA with respect to this Settlement Agreement. Any failure of Settling Parties to provide funds for EPA's Future Response Costs as provided in this Settlement Agreement is a violation of this Settlement Agreement.

12. EPA has estimated that the amount of Future Response Costs that will be expended under this Order will be \$800,000; however, this amount is based on information that EPA has on hand, and Settling Parties acknowledge and agree that this amount could increase or decrease based on new information including without limitation information gathered during the RI. Within 30 Days of the Effective Date of this Settlement Agreement, Settling Parties shall pay \$200,000.00 by Electronic Funds Transfer ("EFT"), in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check made payable to "EPA Hazardous Substance Superfund" to:

EPA Superfund - (06HZ)
CERCLIS #: NM0002271286
U.S. EPA Region 6
P.O. Box 371099M
Pittsburgh, PA 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND.

Settling Parties shall reference the "Griggs and Walnut Ground Water Plume Superfund Site (06HZ), CERCLIS #:NM0002271286," the name and address of the Settling Parties, and "EPA Docket Number CERCLA 6-06-04 Griggs and Walnut Ground Water Plume Superfund Site Special Account" on each check. Settling Parties shall forward a copy of each check and any transmittal letter to:

Chief, Superfund Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency

Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Within 120 Days of the Effective Date, Settling Parties shall pay an additional \$300,000.00 according to the procedures described above in this paragraph. Within 240 Days of the Effective Date, Settling Parties shall pay an additional \$300,000.00, or Settling Parties shall pay EPA's estimate of the amount necessary for EPA to complete the RI/FS (whichever is less) according to the procedures described above in this paragraph. At some time before EPA issues the Notice of Completion as provided in Section XVIII (Notice of Completion), EPA will bill Settling Parties for any Future Response Costs not paid under the preceding provisions of this paragraph (if there are any Future Response Costs that remain unpaid), and Settling Parties shall pay that amount within 30 Days of their receipt of EPA's bill according to the procedures described above in this paragraph. All payments made by Settling Parties under the provisions of this paragraph shall be deposited in the Griggs and Walnut Ground Water Plume Superfund Site Special Account and shall be used by EPA to pay Future Response Costs or returned to the Settling Parties if appropriate under the terms of Paragraph 14. Neither dispute resolution nor a request to the RPM for more detailed information nor a request for certified cost documentation shall delay the date that Settling Parties' payments are due under this Paragraph.

13. Beginning 120 Days from the Effective Date, approximately every 30 days, EPA will provide the Settling Parties with an unreconciled report of Future Response Costs paid from the Griggs and Walnut Ground Water Plume Superfund Site Special Account since the Effective Date of the Settlement Agreement, including a breakdown by cost item. If Settling Parties need more detailed information about a specific cost summarized on the report, Settling Parties may contact in writing EPA's Remedial Project Manager to inquire about the specific details. The RPM will, within 14 Days of such contact, attempt to provide the requested information. After the expiration of this 14-day period, Settling Parties may request that EPA prepare and certify supporting cost documentation for some or all Future Response Costs paid since the Effective Date of the Settlement Agreement. The EPA's cost of preparing the certified cost documentation is a Future Response Cost payable from the Griggs and Walnut Ground Water Plume Superfund Site Special Account and will be prepared within 60 Days.

14. After EPA issues its written notice of completion as provided in Section XVIII (Notice of Completion), and after EPA has performed a final accounting of all direct and indirect costs relating to Future Response Costs, EPA shall remit and return to Settling Parties any unused amount of the funds paid by Settling Parties pursuant to Paragraphs 12, 14, and 15. EPA shall initiate the process for remitting and returning unused funds within 30 days of the Notice of Completion. EPA's obligation to return funds to Settling Parties from the Griggs and Walnut Ground Water Plume Superfund Site Special Account for RI/FS shall terminate upon Settling Parties' abrogation of the Settlement Agreement in violation of the Settlement Agreement. If Settling Parties abrogate the Settlement Agreement in violation of the Settlement Agreement then EPA may retain the funds in the Griggs and Walnut Ground Water Plume Superfund Site Special

Account for use related to the Site, or EPA may place the funds in the EPA Hazardous Substance Superfund.

15. Settling Parties may invoke the Dispute Resolution provisions of this Settlement Agreement regarding Future Response Costs paid only after Settling Parties have made an inquiry, regarding the costs in question, to the RPM as described in Paragraph 13, and the 14-day period in which the RPM is to respond has expired. Settling Parties shall limit any disputes concerning Future Response Costs to disputes regarding accounting errors, regarding EPA's payment of costs unrelated (directly or indirectly) to this Settlement Agreement, or regarding excess costs incurred as a direct result of an EPA action that was inconsistent with the NCP. Notwithstanding any other provision of this Settlement Agreement, in any dispute resolution concerning Future Response Costs, Settling Parties bear the burden of establishing an EPA accounting error, the inclusion of costs unrelated to the Settlement Agreement, or that EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. If Settling Parties prevail in dispute resolution regarding Future Response Costs, EPA will adjust the Griggs and Walnut Ground Water Plume Superfund Site Special Account to reflect the amount determined in the resolution of the dispute.

VI. DISPUTE RESOLUTION

16. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

17. If Settling Parties object to any EPA action taken pursuant to this Settlement Agreement, including Future Response Costs paid by EPA, they shall notify EPA in writing of their objection(s) within 14 days of such action or, for objections related to Future Response Costs, within 14 days of Settling Parties' receipt of EPA's unreconciled Report of Future Costs, unless the objection(s) has/have been resolved informally. EPA and Settling Parties shall have 14 days from EPA's receipt of Settling Parties' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended by the agreement of the Parties. Such extension may be agreed to verbally but must be confirmed in writing.

18. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Region 6 Superfund Branch Chief level or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Settling Parties' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Parties shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or in

accordance with EPA's decision, whichever occurs, and regardless of whether Settling Parties agree with the EPA decision.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

19. Interest on Late Payments. If Settling Parties fail to make any payment required by Paragraphs 12, 14, or 15 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

20. Stipulated Penalties. Penalties described below are in accordance with and pursuant to 122(l) of CERCLA, 42 U.S.C. 9622(l).

a. If any amounts due to EPA under Paragraph 12 are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 21, \$700 per violation per day that such payment is late.

b. If any amounts due to EPA under Paragraph 14 or 15 are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 21, \$400 per violation per day that such payment is late.

c. If Settling Parties fail to provide EPA with access or records, reports or information as provided in Sections XII (Site Access) and XIII (Access to Information) within 10 days of EPA's written request, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$300 per violation per day that such access or information is denied.

d. Settling Parties shall pay stipulated penalties to EPA within 45 Days of the date of EPA's demand for payment of the penalties. Settling Parties shall identify all payments to EPA under this Paragraph as "stipulated penalties. Settling Parties shall pay stipulated penalties by certified or cashier's check payable to "EPA Hazardous Substances Superfund." Settling Parties shall mail penalty checks to:

EPA Superfund - (06HZ)
CERCLIS #: NM0002271286
U.S. EPA Region 6
P.O. Box 371099M
Pittsburgh, PA 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND,

Settling Parties shall indicate, on each penalty check, that the payment is for stipulated penalties,

and shall reference the EPA Region and Site/Spill ID Number 06HZ, the EPA Docket Number 6-06-04, and the name and address of the party(ies) making payment. Settling Parties shall send copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) to the RPM and to:

Chief, Superfund Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

21. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments.

23. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V (Special Account for Future Response Costs) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANT NOT TO SUE BY EPA

24. Covenant Not to Sue by EPA. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Future Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by

Section V (Special Account for Future Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

25. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 26. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Future Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

26. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any governmental body, person, firm, corporation or other entity not a signatory to this Settlement Agreement.

27. This Settlement Agreement is without prejudice to any of EPA's rights to recover Past Response Costs and other Site-related costs that are not Future Response Costs, from Settling Parties, and EPA reserves its right to recover such costs from Settling Parties under applicable laws including without limitation CERCLA Section 107(a), 42 U.S.C. § 9607(a). As part of this reservation, EPA expressly reserves its right to recover costs incurred by the United States after the Effective Date that are not related to the RI/FS. Costs which EPA reserves its right to recover include costs related to Remedial Design and Remedial Action for the Site which the United States incurs after the Effective Date, including enforcement costs related to Remedial Design and Remedial Action.

28. This Settlement Agreement is without prejudice to Settling Parties' right to oppose

EPA's recovery of Past Response Costs and other Site-related costs that are not Future Response Costs, from Settling Parties, including costs related to Remedial Design and Remedial Action for the Site which the United States incurs after the Effective Date, including enforcement costs related to Remedial Design and Remedial Action.

X. COVENANT NOT TO SUE BY SETTling PARTIES

29. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Future Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Future Response Costs were or will be incurred, including any claim under the United States Constitution, the Constitution of the State of New Mexico, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Future Response Costs.

30. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

31. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

32. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II (Background) of this Settlement Agreement.

33. The Parties agree that Settling Parties are entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Future Response Costs.

34. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 Days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 14 Days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 14 Days of service or receipt of any Motion for Summary Judgment and within 14 Days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

35. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VIII (Covenant Not to Sue by EPA).

XII. SITE ACCESS

36. If parts of the Site, or any other property where access is needed to implement response activities at the Site, are owned or controlled by any of the Settling Parties, such Settling Parties shall, commencing on the Effective Date of this Settlement Agreement, provide EPA and the New Mexico Environment Department and their representatives, including contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples including drilling wells to collect ground water samples or drilling to collect core samples;

e. Assessing the need for, planning, or implementing response actions at or near the Site; and

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Parties or their agents, consistent with Section XIII (Access to Information).

Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

37. Except as provided herein, Settling Parties shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

40. Confidential Business Information and Privileged Documents.

a. Settling Parties may assert business confidentiality claims covering part or all of the documents, records or other information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 CFR § 2.203(b). If Settling Parties identify records as confidential as provided in 40 CFR § 2.203(b), they will be afforded the protection specified in 40 CFR Part 2, Subpart B, and they will only be released to the public under the provisions and procedures of 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, the public may be given access to such records without further notice to Settling Parties. Settling Parties shall segregate and clearly identify all records information submitted under this Settlement Agreement for which Settling Parties assert business confidentiality claims.

b. Settling Parties may assert that certain records are privileged under the attorney-client privilege, or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted

form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

38. Settling Parties shall not make claims of confidentiality regarding any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing PCE releases or other conditions at or around the Site.

XIV. RETENTION OF RECORDS

39. Until 10 years after the Effective Date of this Settlement Agreement, each Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any retention policy to the contrary.

40. After the conclusion of the 10-year document retention period in the preceding Paragraph, Settling Parties shall notify EPA at least 90 Days prior to the destruction of any such records and, upon request by EPA, Settling Parties shall deliver any such records to EPA, except for privileged records. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in response to an EPA request made in this Paragraph, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

41. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. NOTICES AND SUBMISSIONS

42. Except as otherwise expressly provided herein, whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

Ms. Petra Sanchez (6SF-LT)
Remedial Project Manager
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Fax: (214) 665-6660
(214) 665-6686
sanchez.petra@epa.gov

As to Settling Parties:

Dr. Jorge Garcia, PE
Utilities Director
City of Las Cruces
P O Box 20000
Las Cruces, NM 88004
(505) 528-3511

XVI. INTEGRATION/APPENDIX

43. This Settlement Agreement and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The appendix which is the Site map is attached to and incorporated into this Agreement.

XVII. EFFECTIVE DATE

44. The Effective Date of this Settlement Agreement means the date that this Settlement Agreement is received by the Settling Parties, as documented by a certified mail receipt of courier delivery record, after being signed by the EPA Region 6 Superfund Division Director.

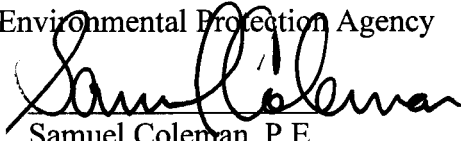
XVIII. NOTICE OF COMPLETION

45. When EPA determines that Settling Parties have paid all Future Response Costs and any stipulated penalties due, and that Settling Parties have otherwise fully performed the requirements of this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to retention of documents, records and other information, EPA will provide written notice to Settling Parties. If EPA determines that any of Settling Parties' obligations have not been completed in accordance with this Settlement Agreement, EPA will notify Settling Parties, and provide a list of the deficiencies.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:


Samuel Coleman, P.E.
Superfund Division Director

20 Apr 05
Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:
Griggs and Walnut Ground Water Plume
Las Cruces, New Mexico

SETTLEMENT AGREEMENT FOR
FUNDING OF EPA'S REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

Doña Ana County, New Mexico, and
City of Las Cruces, New Mexico

U.S. EPA Region 6
CERCLA Docket No.06-06-04

Settling Parties

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622. This settlement agreement is pursuant
to CERCLA section 122(d)(3), 42 U.S.C. §
9622(d)(3).

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter
of the Griggs and Walnut Ground Water Plume Superfund Site, CERCLA Docket Number 6-06-
04, relating to funding for EPA's Remedial Investigation and Feasibility Study for the Site:

FOR SETTLING PARTY: Doña Ana County

Address

By: _____

Signature

Date

Brian D. Haines, County Manager
Print name and title of Signatory

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:
Griggs and Walnut Ground Water Plume
Las Cruces, New Mexico

SETTLEMENT AGREEMENT FOR
FUNDING OF EPA'S REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

Dofia Ana County, New Mexico, and
City of Las Cruces, New Mexico

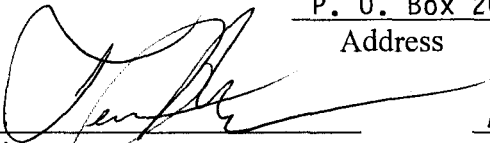
U.S. EPA Region 6
CERCLA Docket No.06-06-04

Settling Parties

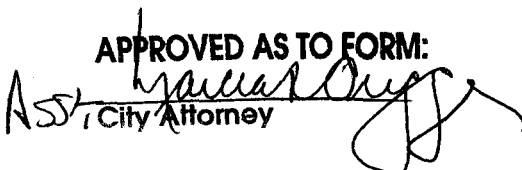
Proceeding Under Sections 104, 107 and
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as amended, 42 U.S.C. §§ 9604, 9607 and
9622. This settlement agreement is pursuant
to CERCLA section 122(d)(3), 42 U.S.C. §
9622(d)(3).

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter
of the Griggs and Walnut Ground Water Plume Superfund Site, CERCLA Docket Number 6-06-
04, relating to funding for EPA's Remedial Investigation and Feasibility Study for the Site:

FOR SETTLING PARTY: City of Las Cruces

By:  P.O. Box 20000, Las Cruces, NM 88004
Signature Address
April 4, 2005
Date

TERRENCE MOORE, City Manager
Print name and title of Signatory

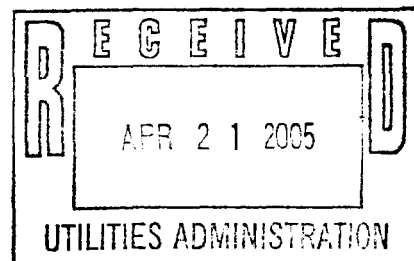
APPROVED AS TO FORM:

City Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733



APR 20 2005

VIA FEDERAL EXPRESS OVERNIGHT MAIL

Mr. Jorge A. Garcia, Ph.D., P.E.
Utilities Director
City of Las Cruces Utilities Department
680 Motel Blvd.
Las Cruces, NM 88007

Re: Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, Doña Ana County, NM; CERCLIS #:NM0002271286; Site ID: 06HZ; Signed signature page of the Settlement Agreement

Dear Dr. Garcia:

Enclosed please find two signed pages of the Settlement Agreement with the U.S. Environmental Protection Agency (EPA), the City of Las Cruces, and Dona Ana County. The document was signed by Mr. Samuel Coleman, Director of the Superfund Division, EPA Region 6 on April 20, 2005.

Thank you for your assistance and cooperation in reaching this agreement. I look forward to working with you and the work ahead of us, to make the ground water cleaner in Las Cruces. I will be in communication with you in the next few weeks as we begin our planning discussions for completing the Remedial Investigation/Feasibility Study. Until then, take care and thanks again.

Sincerely,

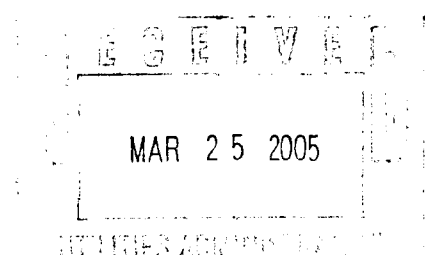
Petra Sanchez
Remedial Project Manager (6SF-LT)
Region 6
US Environmental Protection Agency

Enclosures

EPA DRAFT 3/24/05



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733



VIA FEDERAL EXPRESS OVERNIGHT MAIL

Mr. Brian D. Haines
County Manager
Doña Ana County
180 W. Amador Ave.
Las Cruces, NM 88001

Mr. Terrence Moore
City Manager
City of Las Cruces
200 North Church Street
Las Cruces, NM 88001

Re: Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, Doña Ana County, NM; CERCLIS #:NM0002271286; Site ID: 06HZ; Involvement of the City of Las Cruces and Doña Ana County in the RI/FS process

Dear Sirs:

This is to confirm our mutual understanding of the procedures that the U.S. Environmental Protection Agency (EPA) will follow to ensure that the City of Las Cruces and Doña Ana County (hereinafter the City and County) have full participation in the development of the Remedial Investigation and Feasibility Study (RI/FS) including without limitation the Baseline Risk Assessment and the definition of the boundary of the underground tetrachloroethylene ("PCE") plume. EPA will involve the City and County integrally throughout the RI/FS process. Specifically, we have agreed to the following procedures:

Opportunities for participation in document planning and drafting

1. In coordination with the City and County, EPA will schedule planning meetings or conference calls concerning the following documents to complete the RI/FS. Once the group has reached consensus concerning, i.e., the approach for completing the technical

EPA DRAFT 3/24/05

elements of the deliverable, EPA will provide the City and County with copies of the draft versions (including interim drafts) of the following documents produced for the RI/FS, and invite the City and County to make comments and recommendations:

- a. All work plans that are produced by EPA including without limitation the RI/FS Work Plan, the Sampling and Analysis Plan (including plans regarding monitoring wells), the Health and Safety Plan, the Community Relations Plan, and the Treatability Studies Work Plan;
- b. The Baseline Risk Assessment;
- c. The Remedial Investigation Report;
- d. The Feasibility Study Report;

EPA will review and respond to all timely written comments submitted by the City and County regarding these draft documents. Where appropriate as determined by EPA, EPA will incorporate, into final versions of the documents listed above, comments and recommendations of the City and County. Comments will be considered "timely" if they are submitted within seven working days of receipt for any document under 10 pages long, or within 15 working days for any document 10 pages or longer.

Remedial Investigation

1. EPA will install at least two additional monitoring wells in order to refine the definition of the plume boundary. These additional locations will be selected by the (CLC/DAC/NMED/EPA) workgroup after EPA and the City and County have had technical discussions that support the rationale for the location of the additional wells. In these discussions, the EPA will consider at least the following two locations that have been proposed by the City and County:
 - a. The eastern boundary; generally east of and between municipal wells nos. 19 and 21;
 - b. The south-southeast boundary generally between the Doña Ana County maintenance yard and the Arroyo Plaza (on Lohman Avenue).

The City, the County and EPA will assess potential impacts to human health, if any, which result from PCE contamination present in the vapor phase at the Site. This assessment will include the following elements:

- a. The assessment of the total mass of PCE remaining in the vadose zone;

- b. Collection of additional information regarding exposure of human receptors to PCE volatilization through the use of flux chambers and the appropriate TO-15 methodology.
2. The City will conduct additional periodic monitoring of municipal wells beyond the compliance monitoring done by NMED. The City will provide EPA with the data collected.
3. The City and County will develop a list of private water wells located within the defined plume boundaries or, if information is not readily available, assist EPA in its development.

Ground Water Modeling

4. The City and County shall develop, and submit to EPA, Site ground water models. The City and County will use the models to produce the results described below in a, b and c of this paragraph. The City and County will submit their proposed schedule for the development of the models within 30 days of the effective date of the Settlement Agreement. If the City and County do not produce approvable Site models or modeling results, or if the City and County do not meet deadlines in the EPA-approved schedule, then EPA may produce its own models. EPA agrees that modeling for the RI and FS must be Site-specific. Any hydrogeological models that have already been developed for the Mesilla Valley basin for the City of Las Cruces or Doña Ana County could be incorporated into the RI, but EPA's position could change if new technical information during the RI is brought to its attention.
 - A. The City and County shall develop a Site ground water model.
 - B. The City and County shall conduct ground water modeling to assess the current zone of capture resulting from the four existing impacted municipal water supply wells. The City and County shall use this modeling to assess pumping rates from these and other wells to determine what configuration and operations may give the most effective removal of PCE contamination from within the plume boundary.
 - C. The City and County shall continue to develop and test the Site model as additional information becomes available from the RI/FS and continued monitoring.

EPA DRAFT 3/24/05

If for any reason, the City and County are unhappy with any of EPA's decisions under the procedures described in this letter, I will, upon written request from either of you, personally review the decision and provide my determination in writing. EPA and the City and County reserve all of their respective rights under the Settlement Agreement for the RI/FS. If you have any questions about the provisions of this letter, or if I have inaccurately captured our agreement, please call me at (214) 665-3110, or your staff my contact Remedial Project Manager Ms. Petra Sanchez at (214) 665-6686.

Sincerely yours,

Samuel Coleman, P.E.
Director
Superfund Division

AGREED:

Mr. Terrence Moore

Mr. Brian D. Haines

City Manager
City of Las Cruces

date _____

County Manager
Doña Ana County

date _____

Exhibit "A"

CITY OF LAS CRUCES ADOPTED BUDGET FY 2004/2005

FUND				
General Fund - 101000				
	FY 2003/04 Actual	FY 2004/05 Adopted	Adjustment	FY 2004/05 Adjusted
BEGINNING BALANCE	\$ 10,574,925	8,673,801		8,673,801
REVENUES				
511010 Property Taxes	\$ 4,621,296	4,648,412		4,648,412
511/514 Pmt in Lieu of Taxes/Franchise Fees	3,611,883	3,394,216		3,394,216
512010 to 015 Gross Receipts Taxes	15,216,321	15,487,234		15,487,234
512041/42/43/48 State Share Taxes	99,949	95,000		95,000
520/521/522 Licenses and Permits	674,767	504,500		504,500
531/532/533 Fines & Forfeitures	1,348,284	1,377,700		1,377,700
541 to 546 Charges for Services	2,466,966	2,449,867		2,449,867
551 to 554 Intergovernmental Revenues	324,823	422,638		422,638
560 Contributions	2,595	1,200		1,200
570 Interest Revenue	178,719	235,000		235,000
590 to 599 Miscellaneous Revenues	1,171,574	1,187,490		1,187,490
800 Other Financing Sources	26,740,170	27,474,493		27,474,493
TOTAL REVENUES	\$ 56,457,347	57,277,750	0	57,277,750
TOTAL RESOURCES	\$ 67,032,272	65,951,551	0	65,951,551
EXPENDITURES				
Reserve Section	\$ 3,370,059	1,901,300		1,901,300
General Government	1,788,905	2,118,698		2,118,698
Administration	2,387,234	2,544,848		2,544,848
Legal	880,242	1,380,872		1,380,872
Financial Services	2,900,259	3,043,071		3,043,071
Public Works	3,061,241	3,002,285		3,002,285
Police Department	13,160,765	15,140,679		15,140,679
Public Services	5,927,789	6,815,659		6,815,659
Fire Department	6,601,420	7,065,103		7,065,103
Facilities Department	6,469,208	6,921,313		6,921,313
Community Development	1,371,770	1,723,439		1,723,439
Miscellaneous Transfers	10,597,267	8,480,627	115,000	8,595,627
Total General Fund Expenditures	\$ 58,516,159	60,137,894	115,000	60,252,894
Adjustment due to change in accruals.	157,688			0
ENDING BALANCE	\$ 8,673,801	5,813,657	(115,000)	5,698,657
Required 1/12th Reserve	4,876,347	5,011,491	9,583	5,021,075
Required General Fund Reserve in VAF	0	0	0	0
UN-RESERVED ENDING BALANCE	\$ 3,797,454	802,166	(124,583)	677,583

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2004/2005**

FUND	DEPT		FUND TYPE	
<i>Walnut/Griggs Plume Project Fund - 603610</i>				
	FY 2003/04 Actual	FY 2004/05 Adopted	Adjustment	FY 2004/05 Adjusted
RESOURCES				
Beginning Balance	\$ 0	0	0	0
REVENUES				
Dona Ana County	\$ 0	0	115,000	115,000
Total Revenues	\$ 0	0	115,000	115,000
Total Resources	\$ 0	0	115,000	115,000
EXPENDITURES				
Purchased Services	\$ 0	0	230,000	230,000
Total Expenditures	\$ 0	0	230,000	230,000
OTHER FINANCING SOURCES (USES)				
Transfer from Fund 101000 - General Fund	\$ 0	0	115,000	115,000
Total Other Financing Sources (Uses)	\$ 0	0	115,000	115,000
ENDING BALANCE	\$ 0	0	0	0



City of Las Cruces

COUNCIL ACTION FORM

For Meeting of April 4, 2005
(Adopted Date)

TITLE:

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT OF EPA'S REMEDIAL INVESTIGATION/FEASIBILITY STUDY, THE "GOVERNMENT TO GOVERNMENT" LETTER AGREEMENT, AND TO AMEND THE FY 04/05 BUDGET.

BACKGROUND:

City Council Resolution No. 05-198 authorized the Acting City Manager to submit to EPA the final form of a good faith settlement offer for funding EPA's Remedial Investigation/Feasibility Study ("RI/FS") for the Griggs and Walnut Groundwater Plume Superfund Site ("Site"). The Resolution further authorized staff to negotiate an agreement for funding jointly with Dona Ana County and EPA consistent with the Resolution, and to bring the finalized agreement for funding back to the City Council for approval.

City and County staffs have been working with EPA to finalize both the Settlement Agreement and the Government to Government Letter Agreement. Offers and counteroffers have gone back and forth, and staff is satisfied that EPA has accepted the substance of the City's proposed modifications. The proposed final forms of both documents generally provide for the following:

1. Settlement Agreement. This agreement provides that the City and the County will fund, in advance, EPA's performance and preparation of a RI/FS for the Site. The funding amounts are specifically designated as \$200,000 due within thirty (30) days after final approval of the Agreement by EPA, the City and the County; then \$300,000 due within 120 days after final approval; and then \$300,000 due within 240 days after final approval. This funding totals \$800,000. Pursuant to the Joint Superfund Project Memorandum of Understanding dated December 1, 2004, the City pays EPA and is reimbursed by the County within thirty (30) days upon presentation of a request for payment from the City.

(Continue on additional sheets as required)

Name Of Drafter: Marcia B. Driggers		Department: Legal on behalf of Utilities		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Utilities		528-3524	Budget		541-2300
			Asst. City Manager		541-2271
Legal		541-2128	City Manager		541-2076

Account Number	Amount of Expenditure	Budget Amount
603610-19601-722190-0	\$230,000.00	\$230,000.00

2. Government to Government Letter Agreement. The Government to Government Letter Agreement is a letter from EPA, which the City and the County would accept, that will be attached to the Settlement Agreement. City and County staffs wanted the letter commitment from EPA because it insures that the City and the County will have full participation in the development of the RI/FS by EPA, including defining the boundaries of the Site. Participation by the City and the County should reduce the costs of the RI/FS, should insure that any remediation remedy that is eventually selected after public participation is acceptable to the City and the County, and should make the process more streamlined and less bureaucratic.

The County Commission will be approving the Settlement Agreement and the Government to Government letter agreement at its meeting on April 12, 2005.

SUPPORT INFORMATION:

- 1) Resolution.
- 2) Settlement Agreement of EPA's Remedial Investigation/Feasibility Study.
- 3) Government to Government Letter Agreement.
- 4) Exhibit "A" - Budget adjustment for FY04/05 for the \$200,000 initial payment by the City of which \$100,000 will be reimbursed by the County.
- 5) Resolution No. 05-198
- 6) Good Faith Offer dated December 21, 2004

COUNCIL OPTIONS:

- 1) Approve the Resolution, thereby authorizing the City Manager to execute the Settlement Agreement and the Government to Government Letter Agreement subject to the County Commission approving both documents at its April 12, 2005 meeting. Will also amend the FY 04/05 budget.
- 2) Deny the Resolution, which may cause EPA to impose a unilateral administrative order without input from the City and the County.

New Mexico Department of Finance Administration
Local Government Division
Financial Management Bureau
Schedule of Budget Adjustments.

ENTITY NAME: City of Las Cruces

FISCAL YEAR: FY 2004-2005

ENTITY CODE: _____

DFA RESO. NO 05-651

SCHEDULE OF BUDGET ADJUSTMENTS

(A) ENTITY RESOLUTION NUMBER	(B) ADJUST. #	(C) I = INCREASE D = DECREASE T = TRANSFER			(D) DEPT AFFECTED	(E) AMOUNT	(F) REVENUE SOURCE FUND TRANSFERRED FROM (FUND & LINE ITEM NUMBER)	(G) EXPENDITURE FUND TRANSFERRED FROM (FUND & LINE ITEM NUMBER)	(H) PURPOSE	(I) APPROVED BUDGET	(J) INCREASE OR (DECREASE)	(K) REVISED BUDGET (COL I PLUS J)	(L) DATE GOVERNING BODY APPROVED
		I	D	T									
05-287	ADJUST. #1	R			Comm Dev	✓ 48,015		101000-General Fund	Adjust expenses due to an agreement.	✓ 60,137,894	✓ 48,015	✓ 60,183,909	4/4/2005
05-288	ADJUST. #2	R			Comm Dev	✓ 201	210600-MPO Fund		Adjust revenue & expenses due to grant award.	✓ 138,462	✓ 201	✓ 138,663	4/4/2005
		E				✓ 201	210600-MPO Fund			✓ 281,832	✓ 201	✓ 282,033	
05-291	ADJUST. #3	E			Facilities	✓ 47,886		601600-Facilities Svcs Fund	Adjust expenses due to approval of a new position & related operating expenses.	✓ 3,493,998	✓ 47,886	✓ 3,541,884	4/4/2005
05-293	ADJUST. #4			T	Utilities	✓ 115,000		101000-General Fund	Increase in transfers out due to creation of a new fund for a clean-up project.	✓ 8,480,627	✓ 115,000	✓ 8,595,627	4/4/2005
05-293	ADJUST. #5	R			Utilities	✓ 115,000	603610-Walnut/Griggs Plume Proj		Adjust revenue & expenses due to a new fund created for a clean-up project.	✓ 0	✓ 115,000	✓ 115,000	4/4/2005
		E				✓ 230,000	603610-Walnut/Griggs Plume Proj			✓ 0	✓ 230,000	✓ 230,000	
05-293	ADJUST. #6			T	Utilities	✓ 115,000	603610-Walnut/Griggs Plume Proj		Increase in transfers in due to creation of a new fund for a clean-up project.	0	✓ 115,000	115,000	4/4/2005
											0	0	
05-304	ADJUST. #7	R			Fire	✓ 1,500	101000-General Fund		Adjust revenue & expenses due to grant award.	✓ 57,277,750	✓ 1,500	✓ 57,279,250	4/18/2005
		E				✓ 1,500	101000-General Fund			✓ 60,288,909	✓ 1,500	✓ 60,300,409	
	ADJUST. #8										0	0	
	ADJUST. #9										0	0	
	ADJUST. #10										0	0	

DATE APPROVED

April 2005

ATTEST

Shirley Clark

APPROVED

LOCAL GOVERNMENT DIVISION Mayor/Chairman

William Mattiaie

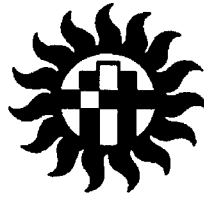
DATE 5/10/05

BY

DEPARTMENT OF FINANCE AND ADMINISTRATION

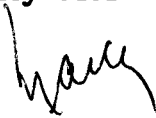
APPROVED AS TO FORM:

Just A. Ruler
City Attorney



City of Las Cruces

INTER-DEPARTMENTAL MEMORANDUM

TO: Shirley Clark, City Clerk
FROM: Marcy Driggers 
SUBJECT: City Council Resolution No. 05-293
DATE: May 18, 2005

Attached is a copy of the signed letter from EPA to the City and County approved in Resolution No. 05-293. This is what we called the "Government to Government" Letter Agreement in the Resolution.

c: Jorge Garcia
Dan Sanantonio



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

VIA FEDERAL EXPRESS OVERNIGHT MAIL

Mr. Brian D. Haines
County Manager
Doña Ana County
180 W. Amador Ave.
Las Cruces, NM 88001

MAR 31 2005

Mr. Terrence Moore
City Manager
City of Las Cruces
200 North Church Street
Las Cruces, NM 88001

Re: Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, Doña Ana County, NM; CERCLIS #:NM0002271236; Site ID: 06HZ; Involvement of the City of Las Cruces and Doña Ana County in the RI/FS process.

Dear Sirs:

This is to confirm our mutual understanding of the procedures that the U.S. Environmental Protection Agency (EPA) will follow to ensure that the City of Las Cruces and Doña Ana County (hereinafter the City and County) have full participation in the development of the Remedial Investigation and Feasibility Study (RI/FS) including without limitation the Baseline Risk Assessment and the definition of the boundary of the underground tetrachloroethylene ("PCE") plume. EPA will involve the City and County integrally throughout the RI/FS process. (The New Mexico Environment Department will continue with its role in technical oversight at the Site). Specifically, EPA, the City, and the County have agreed to the following procedures:

Opportunities for participation in document planning and drafting

1. In coordination with the City and County, EPA will schedule planning meetings or conference calls concerning the technical documents necessary to complete the RI/FS. Once the group has reached consensus concerning the approach for completing the technical elements of the deliverable, EPA will provide the City and County with copies of the draft versions (including interim drafts) of the following documents produced for the RI/FS, and invite the City and County to make comments and recommendations:
 - a. All work plans that are produced by EPA including without limitation the RI/FS Work Plan, the Sampling and Analysis Plan (including plans regarding monitoring wells), the Health and Safety Plan, the Community Relations Plan, and the Treatability Studies Work Plan;
 - b. The Baseline Risk Assessment;

Internet Address (URL) - <http://www.epa.gov/earth1r6/>

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- c. The Remedial Investigation Report;
 - d. The Feasibility Study Report;
2. EPA will review and respond to all timely written comments submitted by the City and County regarding these draft documents. Where EPA determines appropriate, EPA will include City, and County comments and recommendations into final versions of the documents. Comments will be considered "timely" if they are submitted within seven working days of receipt for any document under 10 pages long, or within 15 working days for any document 10 pages or longer.

Remedial Investigation

1. EPA will install at least two additional monitoring wells in order to refine the definition of the plume boundary. These additional locations will be selected by the workgroup (City/County/State/EPA) after EPA and the City and County have had technical discussions that support the rationale for the location of the additional wells. In these discussions, the EPA will consider at least the following two locations that have been proposed by the City and County:
 - a. The eastern boundary; generally east of and between municipal wells nos. 19 and 21;
 - b. The south-southeast boundary generally between the Doña Ana County maintenance yard and the Arroyo Plaza (on Lohman Avenue).
2. The City, the County and EPA will assess potential impacts to human health, if any, which result from PCE contamination present in the vapor phase at the Site. This assessment will include the following elements.
 - a. The City, the County, and EPA will assess the total mass of PCE remaining in the vadose zone;
 - b. The City, the County, and EPA will collect additional information regarding exposure of human receptors to PCE volatilization through the use of flux chambers and the appropriate TO-15 methodology.
3. The City will conduct additional periodic monitoring of municipal wells beyond the compliance monitoring done by the New Mexico Environment Department (NMED). The City will provide EPA with the data collected.
4. The City and County will develop a list of private water wells located within the defined plume boundaries or, if information is not readily available, assist EPA in developing such a list.

Ground Water Modeling

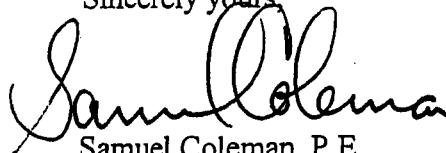
1. The City and County will develop and submit Site ground water models to EPA. The City and County will use the models to produce the results described below in a, b and c of this paragraph. ~~The City and County will submit their proposed schedule or the development of~~

2. The City and County will submit their proposed schedule or the development of the models within 30 days of the effective date of the Settlement Agreement. If the City and County do not produce approvable Site models or modeling results, or if the City and County do not meet deadlines in the EPA-approved schedule, then EPA may produce its own models. EPA agrees that modeling for the RI and FS must be Site-specific. Any hydrogeological models that have already been developed for the Mesilla Valley basin for the City of Las Cruces or Doña Ana County could be incorporated into the RI, but EPA's position could change if new technical information during the RI is brought to EPA's attention.

- a. The City and County will develop a Site ground water model.
- b. The City and County will conduct ground water modeling to assess the current zone of capture resulting from the four existing impacted municipal water supply wells. The City and County will use this modeling to assess pumping rates from these and other wells to determine what configuration and operations may give the most effective removal of PCE contamination from within the plume boundary.
- c. The City and County will continue to develop and test the Site model as additional information becomes available from the RI/FS and continued monitoring.

If for any reason, the City and County are unhappy with any of EPA's decisions under the procedures described in this letter, I will, upon written request from either of you, personally review the decision and provide my determination in writing. EPA and the City and County reserve all of their respective rights under the Settlement Agreement for the RI/FS. If you have any questions about the provisions of this letter, or if I have inaccurately captured our agreement, please call me at (214) 665-6701, or your staff my contact Remedial Project Manager, Ms. Petra Sanchez, at (214) 665-6686.

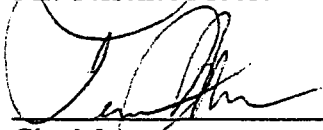
Sincerely yours,



Samuel Coleman, P.E.
Director
Superfund Division


AGREED:

Mr. Terrence Moore



City Manager
City of Las Cruces

Mr. Brian D. Haines

date 4/4/05  date 4/13/05

County Manager
Doña Ana County

cc: Mr. Roberto Trevizo, New Mexico Environment Department